

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT, MIAMI, FL
301 N. Miami Ave, MIAMI, FL

03-22141

CIV. - GOLD

ROBERT F CLARKE, Pro Se
Claimant

CASE NO:

v

MAGISTRATE JUDGE
SIMONTON

TOMMY THOMPSON, SECRETARY
HEALTH & HUMAN SERVICES
Agency

DATE: August 11, 2003

In regards to HIC Number 224 50 7675A, request order from the Secretary of Health & Human Services, via Social Security Administration to order Medicare HMO AVMED to reimburse claimant for full amount of services from British Diagnostic Institute for full amount of services during Spring 2001, an amount in excess of \$1,000, denied by ALJ in the Miami Region Social Security Hearings & Appeals Office.

The ALJ's actions not supported, findings, or conclusions not supported by the evidence. There was an abuse of discretion by the ALJ. and, broad policy/procedure affecting the public interest.

See 20 CFR, S 404.970, 42 CFR S 422.608. See S 1852(g)(5) of Social Security Act, 42 USC, S w-22(g)(5).

FACT: Claimant, member of Medicare HMO AVMED, rarely used AVMED services, but in this situation needed special treatment for impotence, presumably due to diabetes, that threatened his marriage of over 35 years. Hearing commercials on the radio of the British Diagnostic Institute, seemed a possibility for help. Claimant called AVMED and discussed his going to the Institute over the phone, and was told to go ahead, it was located out of the Miami area and submit paid bills for reimbursement. Claimant made several visits to BDI, paid the bills, and after collecting 2 or 3 paid bills, submitted them to AVMED, and continued to go to BDI and paying more bills. Claimant called after awhile to ask about the 2 or 3 already sent in and was informed AVMED was still working on them. Claimant continued to go to BDI for treatment. Then AVMED sent a letter to claimant informing him "to wait to the end, send all bills in in one total marked paid in full along with a completed form HCFA 1500 completed for all visits. Claimant then finished his treatments with BDI, and furnished AVMED with the paid in full complete bill along with the requested HCFA form 1500. To his shock, AVMED then sent a letter saying they were not going to reimburse claimant as he had no "authorization number".

DISCUSSION: When claimant first called AVMED AVMED said nothing of an authorization number, but said go ahead, was located out of the area, and send in bills paid. After sending in several bills and not hearing, claimant called in to ask and was told still AVMED was working on them..AVMED said nothing about wanting an "authoriza-

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AVMED

tion number or offering one or saying there is a need for one or there will be a problem. Claimant in good faith did as AVMED instructed, went to BDI, sent in several paid bills, called, got letter to wait till the end, waited till end, then was shocked when AVMED suddenly when it was all too late said, we are not paying, no authorization number. Claimant learned from BDI that had claimant not been in a medicare HMO, BDI would have submitted bills to Medicare and Medicare would have paid, in part, and many of their patients came to them not in Medicare HMOs. In retrospect, claimant now suggests that AVMED may have purposefully misled him not just at the start, but later on as they saw the bills mounting and let him continue treatments until the end when they had opportunity to inform him of the authorization number problem so that in the end with their "trickery" they would not have to repay him the several thousand dollar bill they could see was coming. Claimant obviously cannot know this, but is suspicious in retrospect..why did they never, on several occasions tell him about need for authorization number.

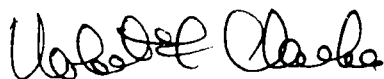
FACT: In the hearing before the ALJ in Miami, the lawyer for AVMED sloughed off the several opportunities to have warned claimant, and also stated that as a good well gesture...at the end of treatment when they denied repayment, AVMED instead sent claimant a token check for the first visit as a gesture; when in fact claimant never got any token check for the first visit then or since. Claimant pointed out to ALJ there never was a check, and about all the opportunities AVMED had to correct the festering situation and never did. ALJ paid no attention to claimant's points. A gross miscarriage has happened here, from both AVMED and the ALJ.

DISCUSSION: Since Social Security made monthly payments to AVMED for medical coverage for the claimant, which in turn promised Social Security they would cover him medically no matter if it cost more or less than those regular month payments, had the ALJ found in favor or if this court now finds in favor of claimant, it sets the Medicare pain ZERO to reimburse claimant. It only costs AVMED. As to AVMED, they enjoyed the membership of claimant for the period of his membership with hardly any claims for hardly any funds. Were AVMED be forced to repay claimant they would still make money on his membership. Had claimant not been in an HMO, Social Security would have paid, in part BDI for its services as they have for others. The ALJ committed an abuse of discretion by not paying heed to the misleading actions by AVMED to claimant, AVMED's failure to ever say anything to claimant about no authorization number, and the lie about sending claimant a token check at the end. Perhaps an error of law in that had the claimant not been in a Medicare HMO, Social Security would have paid. ALJ's findings are at variance with what should have been. The public interest is hurt by allowing a Social Security approved HMO to treat (trick?) an honest medically needy member in this fashion. If AVMED were an attorney, would they be disbarred for such conduct?

CONCLUSION: Right the wrongs of AVMED and the ALJ, and require AVMED to reimburse the claimant for the Spring 2001 BDI services. Claimant is an unemployed person collecting Social Security post age 65, who quit AVMED in disgust in Fall 2001 after this shoddy treatment. AVMED made money off claimant's membership, even if forced to pay this bill...Paying this bill costs Social Security nothing..only AVMED

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NOTE: All documentation is in the hands of Department of Health & Human Services, Departmental Appeals Board, Medicare Appeals Council, Room 633 F, Humphrey Building, 200 Independence AVE SW Wash, DC 20201 This includes: form HCFA 1500, final bill marked paid in full, letter to claimant informing him to wait to the end and submit one final bill total marked apid in full along with the form 1500 covering all visits, and final turn down letter. Had claimant ever imagined there would be a problem, would have asked at start for a letter from AVMED telling him to go ahead, was out of area.

 8/11/03

Robert F Clarke Pro Se

Copies to:

1. General Counsel,
DHHS, 200 Independence Ave SW
Wash, DC 20201
2. US Attorney, Miami Region
Miami, FL
3. Attorney General USA
J Ashcroft
Dept of Justice, Wash, DC

Note: Claimant sought legal help from the Florida Bar Referral Office, obtained 12 names of Social Security attorneys, none of whom was interested, they all wanted to do just SSI and Social Security benefit claims, also sought help from the New Jersey based Social Security claimants organization, same end result, therefore, claimant has no option but to proceed pro se.

JS 44
(Rev. 12/96)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ROBERT F CLARKE

PRO SE

10640 SW 129th Ave MIAMI FL 33196

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF MIAMI DADE
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

PRO SE

3053 821952

DEFENDANTS

Sec. of HHS

200 Independence Ave SW

CIV. DIV. DC 20201

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

SIMONTON

Counsel Dept HHS

(d) CIRCLE COUNTY WHERE ACTION AROSE: DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES
(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|----------------------------|---------------------------------------|----------------------------|----------------------------|
| PTF | DEF | PTF | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
- Citizen of This State
- Citizen of Another State
- Citizen or Subject of a Foreign Country
- Incorporated or Principal Place of Business in This State
- Incorporated or Principal Place of Business in Another State
- Foreign Nation

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS	FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input checked="" type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 A PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions A OR B
A REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	A CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	A LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	B SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7809

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

20 CFR § 404.970

42 CFR § 442.608

42 USC § 1395ff (g)(5) § 1395z (g)(5) 45 CFR 54.1

via days estimated (for both sides to try entire case) 10 days of Medicare HMO To REVERSE PATIENT After Trucking

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION

☐ UNDER F.R.C.P. 23

DEMAND \$

10,000 (See F.R.C.P. 14)

CHECK YES only if demanded in complaint

JURY DEMAND:

☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY**

JUDGE

DOCKET NUMBER

DATE 8/11/03

SIGNATURE OF ATTORNEY OF RECORD

Robert F. Clarke

8150.00 887234

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

08/11/03